

ONEIDA COUNTY BOARD OF ADJUSTMENT – PUBLIC HEARING
December 20, 2016

Chairman Harland Lee called the meeting to order at 1:00 pm in accordance with the Wisconsin Open Meeting Law.

Roll call of Board members present: Mr. Hammer, “here”; Mr. Bloom, “here”; Mr. Ross, “here”; Mr. Albert, “here”; and Mr. Lee, “here”.

Members absent: Guy Hansen and Bob Rossi.

County staff members present: Pete Wegner, Assistant Director and Julie Petraitis, Program Assistant.

Other individuals present: See Sign in Sheet.

Chairman Harland Lee stated that the meeting will be held in accordance with Wisconsin open meeting law and will be tape-recorded and sworn testimony will be transcribed. The Board of Adjustment is made up of five regular members and two alternates, both alternates being present today, who will take part in the hearing and the deliberation. The Board of Adjustment asks that only one person speak at a time because of the difficulty in transcribing when several people are talking at once. Anyone wishing to testify must identify themselves by name, address, and interest in the appeal and shall be placed under oath.

Chairman Harland Lee swore in Pete Wegner, Paul Baumann and Bernice Baumann.

Secretary Phil Albert read the notice of public hearing for Appeal No. 16-005 of Paul and Bernice Baumann appealing the denial of a zoning permit, dated October 27, 2016, by Peter S. Wegner, Assistant Zoning Director, to construct a 20’x25’ shed/garage 37 feet from the ordinary high water mark of Burrows Lake and eight (8) inches from the south west lot line at 3585 Klimek Drive. These activities are contrary to the Oneida County Zoning and Shoreland Protection Ordinance, as amended . The property is located at, Town of, Oneida County, Wisconsin.

The Notice of Public Hearing was published in the Northwoods River News on December 6 and December 13, 2016. Mr. Albert provided the proof of publication; and noted that the media was properly notified.

The Oneida County Board of Adjustment Rules of Procedure, Section 178.05(12), Chapter 17, Oneida County Code of Ordinance, provide that a timely appeal shall stay all proceedings and furtherance of the action appealed from, unless such stay would cause imminent peril to life or property.

The Board of Adjustment will conduct an onsite inspection of the property involved in this appeal beginning at approximately 10:00 am prior to the hearing. Pertinent property boundaries and locations of existing and proposed structures shall be clearly identified. A representative or the appellant must be present. The inspection shall be open to the public.

Copies of appeals and related documents are available for public inspection during normal business hours at the Planning and Zoning Office, Oneida County Courthouse, Rhinelander, WI 54501. The Oneida County Zoning and Shoreland Protection Ordinance is available on the Internet at <http://www.co.oneida.wi.gov/>.

Secretary Albert stated that all media outlets were notified of the public hearing and the onsite inspection was conducted between approximately 10:00 and 10:35 a.m. At the location of 3585 Klimek Drive, further described as part Government Lot 2, Section 3, T36N, R6E, PIN LR 39-13, Town of Little Rice, Oneida County, Wisconsin. Property owners Paul and Bernice Baumann were present as were some of their neighbors. Board members present were Harland Lee, John Bloom, Norris Ross, Phil Albert and Ed Hammer accompanied by Staff Diann Koshuta.

Observations by the Board: The property boundaries were adequately marked allowing for the snow cover the highway/road right-of-way were measured, although difficult because of the snow cover. The well and holding tank were identified and the proposed construction was marked, mostly by orange paint and outlined. In terms of the two structures, there is an existing shed that was measured at about 19.6' x 16.3' approximately 376 square feet which was measured from approximately 39' from the center of the roadway. The proposed replacement structure is proposed to be 18' x 24'. Its rear corner measurement appears to be in the neighborhood of 35 to 36 feet from the high water mark. That is from the marker of the proposed shed. In terms of topography, it is a flat, square lot, shallow from the road to the ordinary high water mark with limited vegetation. No erosion was observed due to the snow coverage. In terms of existing structures there was a fence noted to protect the surface of the holding tank. One other measurement taken was from the existing structure on the left side lot line which appeared to be approximately 22' from the roadway. One other question or items for discussion that may bear some discussion is whether there is any issue with grandfathering and the replacement of the existing shed.

Chairman Harland Lee stated that the Board will hear testimony from the appellant/agent first and then the opposition. Following that, the appellant and opposition will have an opportunity for rebuttal and then closing statements. The public hearing will then be closed from further testimony. Consideration and additional questions can be asked by the Board members of the appellant or the opposition during deliberations. You may stay for the disposition of the appeal. Upon conclusion of the deliberation of the Board, the Chair will call for a motion and a second, and a roll call vote will be taken for the decision of the Board.

SWORN TESTIMONY-APPELLANT.

Mr. Baumann: With the unique physical property limitations; the lot you can see is it is set up like a trapezoid basically. Trying to sneak that in, some sort of a shed to the north side; again working with Jeff at the time he goes 'it's just not going to work there'. He said our best bet is to try and work with where it is at, trying to get something to happen in that location and that is what we're trying to accomplish. The holding tank, you can see, is an issue. That's right in the middle of the yard and we can't move that. Obviously with the setbacks themselves we just can't make nothing happen from the water or from the road. Back in '08 when we applied for the permit for our garage we even had to, as I told some of you gentlemen, we had to cut the corner of the garage off to meet the setback off the road. We had to adjust our design at that point so again, trying to meet what we can with that that's what we were doing there. From the standpoint of the harm to the public, building here is an existing structure. When we purchased it, I mean it was already part of it. Vern and Iva Fernholtz were there today, also I've got a letter from the gentlemen whose yard is adjacent to it, Chris Wozniak, I believe you folks all have that. It looks something of this nature. He had no problem with us correcting, improving, it's an eye sore too so we're trying to make it better for everybody. From the standpoint of the unnecessary hardship, again due to the orientation of the cottage, that is square to the water versus square to the road. The orientation just goofs up everything. The holding tank, the shape of the lot, the storage building location is just very limited. There's really, we really, there's not much we can do, again. We do want to take, because on the south side there or the left side as you look at it, we'd like to pull that to get more clearance off that line to get at least some sort of a setback off that side. We'd like to take that space and put on the back side to again, trying to abide by something. That's basically what we're trying to accomplish here.

Mr. Lee: How long have you had this property?

Mrs. Baumann: We have had it for eleven years.

Mr. Lee: Eleven years?

Mrs. Baumann: Yes. We've been trying to improve it.

Mr. Lee: Was there an original house or is that what's there now?

Mr. Baumann: That was there. What we added was just the garage.

Mrs. Baumann: That is the original structure, we just improved it. The only other thing I would like to add is the longer we keep it the way it is the less chance it is to be insured. I don't even know if they are insuring it today.

Mr. Baumann: Mother Nature has just taken its toll on it.

Mr. Albert: Insuring the existing shed?

Mr. and Mrs. Baumann: The shed, yes.

Mr. Lee: Any questions from the Board, so far?

Mr. Albert: What do you store in there?

Mr. Baumann: I've got a lawn mower, we've got a couple of four-wheelers, and we like to put our wood in there.

Mr. Albert: The ongoing question is square footage. Why the need for the square footage?

Mr. Baumann: I'm just trying to keep it.

Mr. Wegner: You mean in the appeal, how he explained?

Mr. Albert: Yes.

Mr. Wegner: Maybe I can touch on that. I think he was just pointing out that he could have added on more square footage, per the language, at the time he got his permit in 2008 and he didn't exceed the 50 % expansion that he was permitted.

Mr. Albert: To the garage.

Mrs. Baumann: Right.

Mr. Wegner: To the house it but he added an attached garage.

Mr. Albert: I see.

Mr. Lee: No other questions? Pete, do you want to comment?

Mr. Wegner: This is a funny one because the County could argue that prior to this addition, which was in 2008; there was reasonable use of the property with just the shed. When he added the garage that kind of took over some of the square footage that the shed, if he put a new shed there now, what is the square footage of the garage? Is it 4...

Mr. Albert: 432.

Mr. Wegner: 432 and the shed now is...

Mr. Baumann: The garage was 353.

Mr. Wegner: And the shed that is there now is what?

Mr. Baumann: The existing shed is 376.

Mr. Wegner: So in a way, by adding on the garage he replaced storage space with what would be in the shed that can't be replaced in our ordinance today. The future ordinance wouldn't allow it to be replaced because of the setback to the lot line. Ironically, if it met the setback to the lot line it could be replaced under the new rules under NR 115 because all structures are permitted replacement. There is a lot of things going on. One is you could argue that there is a physical property limitation. There obviously is. We've had appeals in the past where they wanted a boathouse and they've already had a garage and or, they wanted a detached garage and they already had an attached garage and they were granted. He could have a boathouse 17 feet wide right here (showing map of property). It would be in his way but the point is he's asking for something that is out of the way, away from the water and there's other alternatives that could possibly be considered worse and one would be the boathouse.

Mrs. Baumann: I'm sorry; can I just add one thing?

Mr. Lee: The ordinance for the lot line is how many feet?

Mr. Wegner: Five feet.

Mr. Lee: Five feet. And his new dimension there is how many feet from the lot line?

Mr. Wegner: He'd be eight inches away and right now he's over.

Mr. Baumann: No, right now the existing structure is at 8". And what I'm trying to do is change that orientation so we can pull it away and I'm...

Mr. Lee: So what would be the new distance from the garage to the lot line? It's not eight inches anymore.

Mr. Baumann: No, I'm closer to two feet. I wish I had that...

Mr. Wegner: Okay, you put on your permit eight inches.

Mr. Baumann: Yes, that was the existing. That's where the existing ...

Mr. Albert: The orange mark, the orange paint was how far from the lot line? Two feet?

Mr. Baumann: I'm going to say I thought it was better than two feet away. It's really close to that. I guess you guys took those pictures didn't you? It should show on that.

Mr. Ross: The obvious question to me looking at it, to Pete is, are you ready Pete or do you want to talk some more?

Mr. Wegner: Yep. I'm really hitting this in a non-linear fashion but go ahead, ask a question.

Mr. Ross: Well, with what you just said in terms of the garage and they used up the...is that the way it is saying that this is not grandfathered in? That he cannot replace an existing structure in the footprint that exists there now.

Mr. Wegner: Not under today's ordinance because it is an accessory structure and even under the future ordinance the County, just at our last meeting, decided to keep the language relative to side yard setback the same. That does not afford any benefit to accessory structures. They are basically done.

Mr. Baumann: And one here too, guys, the reason we put that addition on the garage where we did so it didn't obstruct exit windows on bedrooms.

Mrs. Baumann: And the other thing I wanted to add, too, is that garage is not big enough to put a vehicle in it.

Mr. Wegner: That is probably correct. What are the dimensions, 17 x ...

Mrs. Baumann: We tried to do that.

Mr. Wegner: You just have to get a smaller vehicle. Normally I'd have a bunch of arguments to say why it shouldn't occur but there's it's on a fine line where yes, there is a physical property limitation. Is reasonable use being denied by not having a shed? One could argue no, because they have a garage but then again they've had the shed there since the time the home was placed. Alternatives could be that they could add on to the garage more, they could have a boathouse and I think those two, as far as the comment you just made regarding the windows and just the view from the water or from their home even. Those are the least desirable versus putting it the way he is proposing it. He is going to have it further from the lot line than it was before, he is going to meet the twenty foot setback, I just hope that would be marked again because of the snow coverage it is pretty close although you are moving it up.

Mr. Lee: Now the new ordinances, Pete, you said are going to allow replacement providing they meet any other dimensional concerns and the only dimensional concern here is the business to the lot line. Is that correct?

Mr. Wegner: Correct.

Mr. Lee: Okay. And that will be in the upcoming ordinance.

Mr. Wegner: Yes, we are keeping the same language.

Mr. Lee: Okay. I think we need to be sensitive to what is coming. We need to know what is now but if there is any chance that the new ordinance would give you some relief I think we need to be fair in terms of considering that. I think that is what the Board is feeling and has been all along. Other comments?

Mr. Ross: How many square feet, if you moved it five feet so that your side was, you know and make it as long as you...how close are we to the road right-of-way and how far back is this shed going to be lopped off?

Mr. Albert: It is 22' from the edge of the road and 39' from the center so the right-of-way is 20', right?

Mr. Wegner: His survey, there was a survey that was done in 2003 that shows that it meets the setback of 20'. The PV Web maps and the roads are not always placed within the right-of-way.

Mr. Lee: What is your intention to store in that?

Mr. Baumann: Just storage.

Mr. Lee: The same kinds of things that you have in there today.

Mr. and Mrs. Baumann: Right.

Mrs. Baumann: Just make it look a little better.

Mr. Lee: If the building were a couple feet smaller on one dimension or another would significantly affect you?

Mr. Baumann: No, and that is why I was kind of changing that so we could do something with that left side, get it off that line as best we can. We're still at the mercy of that crazy holding tank.

Mr. Wegner: Where is the holding tank?

Mr. Baumann: (Looking at the map) Do you see the fence? Right there.

Mr. Albert: There are two parts to your existing shed. There is an older part that looks like it is older and there's the left side where it has been added on. What existed when you bought the house?

Mrs. Baumann: All of it.

Mr. Baumann: That was all of it. What they did, that part to the, the narrower part...that was actually sitting on logs. At one point it just rotted away on me and I just re-firmed it up. The part to the right they had put an overhang on there and enclosed it.

Mr. Albert: Is there a slab under there?

Mr. Baumann: Nothing.

Mr. Albert: Okay. So the addition on the left side, whatever that is maybe six feet, five feet really is the offender in terms of the property line. It should be a minimum of five feet, correct?

Mr. Wegner: Yes.

Mr. Albert: So what appears to be the original shed was...

Mr. Lee: There's a shed and then there is an add-on.

Mr. Wegner: In a perfect world it would be nice if this is two or three feet and he only has to take two or three feet off the shed then he'd only be needing a variance from the ordinary high water mark. I don't know how much further, could you make that up on this side?

Mr. Baumann: That's what we use for an access.

Mr. Wegner: Oh my gosh, yeah, never mind.

Mr. Baumann: It's a tough one. I'm trying to follow your guideline.

Mr. Ross: I'm going to ask two obvious questions in lieu of the new language and everything going on can he go up?

Mr. Albert: It is tough to put a lawn mower on the second story.

Mr. Wegner: They do, they do.

Mr. Ross: Wait a minute, I'm asking a serious question here.

Mr. Wegner: Under the new ordinance...

Mr. Ross: The rules say you can go up. I just throw that in the hopper, okay.

Mr. Wegner: The lot line issue aside, if it met the setback for the lot line they could go up or down within that footprint not to exceed 35' in height.

Mr. Ross: That's right. I'll ask another serious question. Can he add on to the house and they can walk through the house, get the whole thing on. Would that be allowed at this point?

Mr. Wegner: There wouldn't be enough square footage and then you've got the holding tank and then...

(looking at the pictures/map)

Mr. Ross: No, back here you...

Mr. Wegner: But if you come off square...

Mr. Ross: What if you went back? Just throwing it out there.

Mr. Wegner: If they went back at 40', well he's 45' here now he couldn't add on any closer than 40' but I'd have to see what he has for square footage. I'll double check that.

Mr. Hammer: One of the other questions is how small of a shed can you live with?

Mr. Baumann: Ideally I'd like to put a vehicle in it.

Mr. Hammer: That's out of the question.

More than one person talking here.

Mr. Baumann: The dimension, the depth of the shed I was looking to get 24' out of because I've got that truck.

Mr. Wegner: He only has 76 square feet remaining for expansion based on the language today.

Mr. Ross: Okay, that's why.

Mr. Albert: Say that again.

Mr. Wegner: He was commenting whether they could add on.

Mr. Albert: Right.

Mr. Wegner: He only has 76 square feet left of his 50%.

Mr. Albert: Okay. If he were to twist, here's the house and here's the shed (pointing at map) if he were to twist to a line more parallel to the house you'd have the 20' right-of-way issue, right, that you incurred with the addition of the garage.

Mr. Baumann: Correct.

Mr. Albert: What you call a garage which apparently isn't a garage so if you move that back then you'd have an issue with the distance to the ordinary high water mark.

Mr. Wegner: And right-of-way.

Mr. Albert: And right-of-way. Well the purpose is to build a garage, not so much a storage shed then if you want to park your car or your truck there.

Mr. Baumann: The only time would only really be for weather purposes but yes I guess that is the language I was trying to go with was a storage shed.

Mrs. Baumann: But that would also allow us to put our pontoon boat in there, too.

Mr. Lee: Well, gentlemen.

Mr. Ross: It's obvious that we're groping to try to help, which is not really our purpose but it's tough to know what to do on a lot that is 74' x 70. I don't like to be a cold sounding kind of person but that's what you bought, that's what you have, that's what you own and it's a tough one.

Mr. Hammer: Which is where I don't see the unique physical property limitation.

Mr. Ross: We do tend to look at things; I guess we're jumping ahead.

Mr. Lee: You don't think there is a unique physical property limitation?

Mr. Hammer: No. What is there is what's there and yes the property they can't put a much bigger shed on it because they don't have enough room. I guess I don't see that as being a unique property limitation. But you guys may well see that differently than I do.

Mr. Baumann: I'm not really looking to make it bigger I'm eliminating the south side to get away from that setback to get something away from there to work with it. With that I'm keeping the square footage just putting it on the west side.

Mr. Albert: My comment is that I think there is a difference between recreating a shed that is structurally decomposing versus looking to build some structure that he can park his truck in. That's not a storage shed that's a garage and there isn't room for a garage.

Mr. Ross: I guess we're in the open discussion, what would he come to you as a storage shed that would be allowed?

Mr. Wegner: Nothing because of the setback to the ordinary high water mark and lot line.

Mr. Ross: It's when people apply to do something when all the rules suddenly come to bare. It's when you want to replace and that's...

Mr. Lee: I thought you said that considering what the new ordinances are going to be that the only limiting factor was the distance from the shed, garage whatever we call it...

Mr. Wegner: To the lot line.

Mr. Lee: To the lot line. Otherwise it could be replaced.

Mr. Wegner: That's correct.

Mr. Ross: That's really what I was asking.

Mr. Wegner: I'm sorry, yes.

Mr. Ross: How small a shed then is allowed if he came to you with a permit request right now and everything was perfect for putting a shed here of some size, what would it be?

Mr. Lee: The lot line restriction is five feet?

Mr. Wegner: Yes.

Mr. Lee: If you move that over or reduced your building by five feet how much would that be a hardship?

Mr. Wegner: It wouldn't even be five feet it would be two or three feet, right? Because he's already two feet from ...

Mr. Lee: If you're two feet from there now if you reduced it by three feet how much of a problem would that be for you? What I'm getting at, if you do that there is no sweat here.

Mrs. Baumann: Would it be the same length or is the length if there's room...

Mr. Baumann: Can we take that square footage and put it towards the water?

Mrs. Baumann: Yes, I guess that's what I'm asking.

Mr. Baumann: And that's where we get into that next issue.

Mr. Lee: That just compounds another issue.

Mr. Baumann: Right, right.

Mrs. Baumann: So as far as...

Mr. Hammer: You've got an additional couple feet based on what I saw out there from the existing. It wouldn't have to be in the same footprint, but narrower it could be in the same footprint, narrower but a couple feet longer based on where your orange paint marks were. Is that how you guys saw it?

Mr. Albert: Correct.

Mrs. Baumann: Yes, well I think that...

Mr. Wegner: You are looking at you wouldn't need a variance because under the new language; we probably have to be careful with that because right now our language now and the new language the lot line issue is always going to be there.

Mr. Hammer: Yes.

Mr. Wegner: If he came in for a new permit to build something he'd still have to meet the 75' setback so you are kind of mixing what you need to do to be compliant and what the new language is going to be. When in reality he is still going to have a reduced setback to the ordinary high water mark unless I'm missing something.

More than one person talking here.

Mr. Hammer: I thought you had it.

Mr. Lee: I thought you said the lot line was the only restricting factor. Now you're throwing in the high water mark.

Mr. Hammer: Yes.

Mr. Albert: Well, but that's...

Mr. Wegner: If it was, I said it was a restricting factor because in the future you can replace any structure less than 75'. The issue with the lot line doesn't help them at all but any accessory structure that does not meet the five foot setback under our ordinance today and the proposed language is still going to be limited to ordinary maintenance and repair.

Mr. Baumann: Not replacement?

Mr. Wegner: Not replacement.

Mr. Baumann: Gotch ya.

Mr. Hammer: Well, help me figure this out then. He comes in with a zoning permit application to build a shed that is five feet off the lot line and basically looking at what we're talking about. Under the new proposed ordinance he'd be okay or he still wouldn't be okay?

Mr. Wegner: He still would not be okay because he had to be 75' back from the water.

Mr. Bloom: I think we're really splitting hairs on the dimension of what they have and what they want.

Mr. Wegner: I think I confused you at the beginning by saying he could replace...

Mr. Lee: You did. You said he could replace it.

Mr. Wegner: And my reason for saying that is if it was a five foot setback and it was two feet from the water he could replace it. In his defense, even though it doesn't meet the setback to the lot line there are other structures that if they did and they were even closer to the water they could be replaced. And he could have a boathouse and he could add on to the garage 76 square feet.

Mrs. Baumann: So is it because we don't meet the five foot setback that we don't we can't. Is that the only issue?

Mr. Wegner: Under the new language if you met the five foot setback you could replace it at that 45' foot setback.

Mr. Lee: That's what I thought I heard you say.

Mr. Wegner: Yes, but it doesn't meet the five foot setback.

Mr. and Mrs. Baumann talking at the same time here.

Mr. Wegner: Then it's a structural alteration it's something that doesn't meet the five foot setback.

Mr. Hammer: I'm confused.

Mr. Wegner: Right now they are eight inches from the lot line so they don't meet the five foot setback. I can't allow any structural alteration to an accessory structure, now or in the future, if they don't meet the five foot setback. At eight inches we wouldn't allow them to cut off four feet four inches because that is a structural alteration in itself.

Mr. Hammer: And that is because of the distance from the ordinary high water mark?

Mr. Wegner: To the lot line. In the future, anything that meets all other applicable setbacks that are less than 75' can be replaced.

Mr. Hammer: I'm still not getting this. Are you guys getting this?

Mr. Lee: Yes, one minute I think I got it and the next minute I don't.

Mr. Wegner: How do I better explain it? The way it was denied is it is an accessory structure and he came in for a new permit to build a new accessory structure not meeting the applicable setbacks so it was denied. Under the new language, if it met the five foot setback and 20' setback to the right-of-way I wouldn't have denied it because he could have replaced it. Any structure can be replaced within 75' feet, meeting all the other applicable setbacks. Our committee just recently was talking about non-conforming and they want to keep our language related to structures, accessory and principal that don't meet right-of-way, lot line regulations. You guys are confusing me now.

Mrs. Baumann: Are you asking this committee to approve or deny a new accessory structure for us or are you asking them to approve the structural change to an existing or deny?

Mr. Wegner: I can't really do either. I'm just stating here are other options. If you're going to grant a variance you're also going to need a relaxed setback from the ordinary high water mark. If the County had a say and you told me you were going to grant a variance regardless I would say meet the five foot setback, maintain the 20' setback and give them a variance for 45' from the ordinary high water mark.

Mr. Ross: And that was my exact question. How big a structure is left?

Mr. Wegner: That is 15' x 24'.

Mr. Ross: That's what I came up with.

Mr. Lee: What is the size of the proposed?

Mr. Ross: 18'x 24' and my reaction to that would be if we can give that variance we ought to do it. It's obvious that we are groping to try to help them, which normally we don't do that. It isn't going to meet the garage and my reaction to that is that is just the way it goes. If they can't solve all their problems they can't solve all their problems.

Mr. Albert: What about the area where you park your float boat?

Mr. Baumann: That is, what I have there is bedrooms along that wall and I didn't want to obstruct the windows for exits.

Mr. Albert: Okay. How deep is what you are now calling the garage that doesn't fit a car? How deep is that part of the structure?

Mr. Wegner: 19' x 20'.

Mr. Albert: The lot line goes back through those two dead trees he said so you could have come over... that's what could have been I guess.

Mrs. Baumann: I don't think it could have. I think what we have down is what we were allowed to build on.

Mr. Baumann: Again, I don't remember. I worked with Jeff at the time and we were just trying to utilize that. I don't remember everything that was said at that time. I know there...

Mr. Wegner: They would have 76 square feet left to add on.

Mrs. Baumann: And I don't think, because of the way the lot is set up that we can add on. We did a lot of planning ...

Mr. Wegner: It would be close for all your setbacks.

Mr. Baumann: We worked with Jeff and also Scott Rathbun...

Mrs. Baumann: We had to put this little jog in here (looking at the drawing). I don't think we have any additional space there that we could play with.

Mr. Wegner: You couldn't add on where these, I don't know what this is (looking at the drawing) planters or...

Mr. Baumann: That is actually our dock.

Mr. Wegner: You couldn't add on there anyway because it is less than 40'. I apologize for confusing you but I guess if you're going to grant a variance of some sort I would hope that it would just be to the ordinary high water mark.

Mr. Lee: And the building would be 15' x 24'.

Mr. Wegner: Correct.

Mr. Bloom: Or 18' x 24'.

Mr. Lee: Not 18' x 24'.

Mr. Bloom: It could be 18' x 24'.

Mr. Ross: Not and get the 5' setback to the lot line.

Mr. Bloom: No, you wouldn't get that. But right now they've got eight inches and the way they would it would be two feet. I think we're splitting hairs on this.

Mr. Ross: Then you're giving a side variance and an ordinary high water mark variance.

Mr. Bloom: That'd be correct.

Mr. Wegner: And the reason for the, me yielding on the ordinary high water mark is the comment that they could have a boathouse.

Mr. Hammer: I think that you have to look at this realistically at all the other properties and where they are from the ordinary high water mark.

Mr. Wegner: That's true.

Mr. Baumann: And that's what this drawing is here, guys. This is showing the neighbors (looking at the drawing). Klein's which is to the north, theirs is 45; Chris Wozniak which is to the south, he's at 22.

Mr. Lee: Everything is on top of the water.

Mr. Wegner: And on top of the right-of-way, actually. This one was able to replace it within its footprint and it was only one foot from the right-of-way.

Mr. Lee: I guess...

Mr. Bauman: I tried to get as much data as I could to, so I ...

Mr. Lee: Is there any other questions on this? Any other things you want to say?

Mr. Baumann: We've been trying to work with you guys to make this all happen. I know it's a real puppy, so.

Mr. Lee: I hope that you would sense that we're trying to work with you.

Mrs. Baumann: Oh yes, definitely. We appreciate it.

Mr. Lee: We could just sit down and say "boom", this is the way it is and you're done.

Mr. Baumann: I don't want to do something wrong.

Mr. Lee: We're trying to work with you as well.

Mrs. Baumann: Thank you. We appreciate that.

Mr. Ross: And we do see a pattern sometimes in these situations where we grant this one and they come in and "oh now we want this one".

More than one person talking here.

Mr. Baumann: This has kind of been something that when we purchased the place how we wanted to, this is the last piece of the puzzle right here to clean that thing up. We know it's an eyesore for the neighbors. Chris Wozniak, I even told his daughter, 'hey we're trying to give you an early Christmas present we're trying to clean this baby up for you'. You guys couldn't see the south side because I didn't make a path over there. We're losing the shed and we have to definitely...

Mr. Lee: At this point I'm going to close the public hearing to any further input. You're welcome to stay here and listen to the deliberation, but there will be no other testimony at this time. If we have any particular questions during this time we may ask you and if we do I ask that you just confine your answer to that question.

Mr. Bloom: In my opinion, I put a little logic and common sense to this and as far as unique goes, yes I think with the lot dimensions and the septic in there I do believe it is a unique area. I don't think there is any harm to the public. In fact it is quite the

opposite. Take the eyesore out of there and make it something. I think they can pass the hardship considering the septic in there that really throws a wrench into it and the configuration of the new one, to me, it makes perfect sense to me and I would go along with a 24' x 18' and...

Mr. Lee: 24' x 15'.

Mr. Bloom: 24'x 18', that's what the requested area is marked off. I would be in favor of approving the appeal.

Mr. Lee: But with a 24' x 15' they don't have need a variance for the, all they did is a variance from the high water mark not from the side. You're thinking would actually be two variances.

Mr. Bloom: Yes.

Mr. Lee: You know what I'm saying?

Mr. Bloom: I know exactly what you're saying and I know you knew what I'm saying.

Mr. Lee: Norris?

Mr. Ross: You know it's the time when things come up like this when corrections could and should be made to correct situations and that's why we have these zoning things. I'm not concerned about whether they have a garage or not have a garage to park their car. I think you could get used to a shed. It seems logical to try to have one with a small place. I would be in favor of giving them the variance from the high water mark but I think it's time to move things in from the lot line. I would suggest that if they were willing to do that that they should go with a building about 15, whatever it takes to get five feet from the lot line even if it is 14.5. I don't know what it is exactly. I could see giving them that variance for the ordinary high water mark.

Mr. Albert: I definitely see advantages to the public, to them in terms of replacing this existing structure. It's not going to stand too much longer by the looks of it. I agree that there is an issue with the lot line. I think that is something that needs to be adhered to so 15' x 24' I'd have no problem with. If they are asking for a storage shed that's a storage shed and being able to replace what they currently have I think is appropriate and proper. I don't have a problem with the variance to the high water mark distance but I do have a problem with, I think there is need to correct the five foot from the lot line ordinance.

Mr. Lee: Okay, Ed.

Mr. Hammer: Well, I'm a strict constructionist as it comes to these categories. I don't think it meets the categories that we're talking about. If I was asked to vote on that I would say no. However, I also see that what they're doing is improving the property. I agree with the idea of approving a variance to the ordinary high water mark not for the lot line. I'm in essence saying I would be happy to see, even though I'm a strict constructionist on this, I would be happier to see the variance to the ordinary high water mark and a narrower shed, be it 15' x 24' or if it's even maybe a foot or two longer more than 24'. I'm okay with that.

Mr. Lee: Okay. Everybody has had a kick at the can. Is anybody ready to make a motion to see what happens?

Mr. Ross: I would make a motion that we would grant the variance to allow them to build a shed. The variance being from the ordinary high water mark, the setback, assuming they can put the shed in and meet the side lot stipulation of five feet and I'm assuming they are staying at the right-of-way of the road at the same time. I'm making that assumption so I'm making that motion.

Mr. Albert: And staying five foot from the holding tank. They have to stay five foot from the holding tank.

Mr. Ross: Yes, I'm making that assumption.

Mr. Lee: So in essence, if they would agree to build a 15' x 24' ?

Mr. Ross: Assuming a 15' x 24' does that. I guess I can't know for sure.

Mr. Lee: Is there a second to that motion?

Mr. Albert: I second that.

Discussion on the motion.

Mr. Albert: To a certain degree, not that you did it, but the restrictions that we are dealing with were self-imposed based on the lot size by the placement of the house, the garage, whatever you want to call it; certainly the lack of depth in the lot and the width of the lot. So self-imposed meaning that there are issues that have to be dealt with in order to stay within the code. The fact that there is a shed there and has been a shed from whenever I think there is a purpose to allow that to be replaced if it is for the purposes of storage shed.

Mr. Lee: Okay, I'm going to call the question then. Mr. Hammer, "aye"; Mr. Bloom, "aye"; Mr. Ross, "aye"; Mr. Albert, "aye"; and I vote "aye" as well. That is the decision. The decision is that we give you a variance from the ordinary high water mark and you

can build a shed providing that it is five feet off of the lot line, which essentially makes it 15' x 24' .

Mrs. Baumann: Thank you. We appreciate it.

Mr. Baumann: Appreciate it.

Mr. Lee: Alright, we're done. How much time do you need to write the decision?

Discussion was held on the Krutza decision.

Mr. Lee: Okay, how much time do you need to get this all done?

Mr. Wegner: Thursday of next week?

Mr. Lee: Thursday of next week? December 29, 2016. I move that the response and the decision be ready by the 29th of December.

Mr. Ross: Second.

With all members present voting "aye", the motion carried.

2:10 pm - The meeting was adjourned on a motion by Phil Albert and second by Norris Ross; and all members voting aye.

Harland Lee, Chairman

Phil Albert, Secretary